
PRELIMINARY DRAFT

No. 3364

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2008 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 7.1-5-12; IC 16-41-37.

Synopsis: Smoking ban in certain public places. Prohibits smoking in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles. Provides exemptions. Requires the alcohol and tobacco commission to enforce the prohibition. Makes it a Class B infraction to violate the smoking prohibition for the first offense and a Class A infraction if the person has three unrelated prior offenses. Repeals the current clean indoor air law that prohibits smoking in public buildings.

Effective: July 1, 2008.



A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 12. Prohibition on Smoking

Sec. 1. As used in this chapter, "public place" means an enclosed area in which the public is invited or permitted.

Sec. 2. As used in this chapter, "smoking" means the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment, or the inhalation or exhalation of smoke from lighted smoking equipment.

Sec. 3. (a) Except as provided in section 4 of this chapter, smoking is prohibited in the following:

(1) Public places.

(2) Enclosed areas of a place of employment.

(3) Vehicles owned, leased, or operated by the state if the vehicle is being used for a governmental function.

(b) An employer shall inform each of the employer's employees and prospective employees of the smoking prohibition in the place of employment.

(c) An owner, operator, manager, or other individual with authority shall remove ashtrays or other smoking paraphernalia from areas where smoking is prohibited under this chapter.

Sec. 4. (a) This chapter does not apply to the following:

(1) A private residence, unless services for which a license is required under IC 12, IC 16, or IC 25 are provided in the residence.

(2) A family-owned and operated business:

(A) that does not allow public access; and

(B) in which all the employees are related to the owner of the business.

(3) A hotel or motel room that is rented to a guest as a



designated smoking room if not more than twenty percent (20%) of the rooms that are rented to guests have a smoking designation.

(4) A retail store:

(A) at least sixty-six percent (66%) of the business of which is the sale of tobacco products; and

(B) that:

(i) does not have a license for the consumption of meals or alcohol on the premises; or

(ii) is not operated in conjunction with a business that is licensed for the on-premises consumption of meals or alcoholic beverages.

This subdivision does not include a tobacco department of a grocery store, drug store, department store, or discount store.

(5) A private or semi-private room of a health facility or other long term care facility if the room is occupied by an individual who has requested in writing to be placed in a room where smoking is permitted.

(6) A vehicle used by an employee while in the service of an employer when the employee is the sole occupant of the vehicle.

(7) A business that:

(A) offers alcoholic beverages for sale to customers for consumption on the licensed premises under a retailer's permit issued under this title;

(B) does not admit customers or hire employees that are less than twenty-one (21) years of age; and

(C) generates at least ten percent (10%) of its total annual gross income from the onsite sale of tobacco products during a calendar year.

(8) A bar or tavern that:

(A) holds a retailer's permit issued under this title;

(B) does not allow individuals who are less than eighteen (18) years of age to enter the premises;

(C) does not employ an individual who is less than eighteen (18) years of age;

(D) is not physically located within a business that is otherwise prohibited from allowing smoking under this chapter; and

(E) provides written notice to the commission, in the manner and before a date prescribed by the commission, that the establishment:

(i) intends to allow smoking on the premises; and

(ii) meets the requirements of this subdivision.

(9) A business that:

(A) is exempt from federal income taxation under Section



501(c) of the Internal Revenue Code;
 (B) is a club or a fraternal club;
 (C) holds a retailer's permit issued under this title; and
 (D) provides food or alcoholic beverages only to a member
 of the club or the guest of a member of the club.

(10) A bowling alley.

(b) An establishment exempted under this section that allows smoking on the premises shall conspicuously post a sign at every entrance that states: "Warning: This is a smoking establishment."

Sec. 5. The commission shall enforce this chapter. The commission may inspect premises that are subject to this chapter to ensure that the person responsible for the premises is in compliance with this chapter.

Sec. 6. (a) The official in charge of a public place shall do the following:

(1) Post conspicuous signs that read "Smoking Is Prohibited By State Law" or other similar language.

(2) Request an individual who is smoking in violation of this chapter to refrain from smoking.

(3) Remove an individual who is smoking in violation of this chapter and fails to refrain from smoking after being requested to do so.

(b) The proprietor of a restaurant shall post conspicuous signs at each entrance to the restaurant, informing the public of the establishment's smoking policy.

Sec. 7. A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) previous unrelated judgments for a violation of this chapter.

Sec. 8. An owner, manager, or operator of a public place or place of employment that fails to comply with this chapter commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) previous unrelated judgments for a violation under this chapter.

SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has the meaning set forth in IC ~~16-41-37-3~~. **IC 7.1-5-12-2.**

SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Notwithstanding IC 12-27-3-3, the superintendent of a state institution has complete authority to regulate smoking (as defined in IC ~~16-41-37-3~~) **IC 7.1-5-12-2**) within the state institution.

(b) A physician licensed under IC 25-22.5 may prescribe nicotine as is medically necessary for a resident of a state institution.



1 SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007,
 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2008]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has
 4 the meaning set forth in IC 16-23.5-1-2.

5 (b) "Agency", for purposes of IC 16-40-5, has the meaning set forth
 6 in IC 16-40-5-1.

7 ~~(c) "Agency", for purposes of IC 16-41-37, has the meaning set forth~~
 8 ~~in IC 16-41-37-1.~~

9 SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. A person who
 11 smokes

12 (1) in a public building, except in an area designated as a smoking
 13 area under section 5 of this chapter;

14 (2) in the retail area of a grocery store or drug store that is
 15 designated as a nonsmoking area by the store's proprietor;

16 (3) in the dining area of a restaurant that is designated and posted
 17 as the restaurant's nonsmoking area by the restaurant's proprietor;

18 or

19 ~~(4)~~ in a school bus during a school week or while the school bus
 20 is being used for a purpose described in section 2.3(3) of this
 21 chapter

22 commits a Class B infraction. However, the violation is a Class A
 23 infraction if the person has at least three (3) previous unrelated
 24 judgments for violating this section that are accrued within the twelve
 25 (12) months immediately preceding the violation.

26 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
 27 JULY 1, 2008]: IC 16-18-2-298; IC 16-18-2-332; IC 16-41-37-1;
 28 IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-5; IC 16-41-37-6;
 29 IC 16-41-37-7; IC 16-41-37-8.

